

inventions must be independent or distinct as claimed, and second, there must be a serious burden on the Examiner. Applicants assert that the Examiner has not met this burden to sustain a proper restriction requirement, as the Examiner has demonstrated that neither the inventions are distinct or independent, nor does a serious burden exist. Indeed, "[f]or the purposes of the initial requirement, a *serious burden on the examiner* may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02." (Manual of Patent Examining Procedure, § 803, 7th Ed.) (Emphasis added). As the examiner merely asserted that the inventions are independent and distinct, and has not proffered any proof of this assertion, the Examiner has not met this serious burden of establishing that the invention are independent and distinct.

Furthermore, Applicants assert that this restriction requirement is also improper, because not all of the currently pending claims have been assigned to a group. Although claim 27 is pending, the Examiner had not assigned it to any particular group. Thus Applicants are in a position to have to elect a particular group without knowing the claims in each group, and consequently, they are at a complete loss as to which claims they are electing. For this reason alone, the restriction requirement is improper.

Conclusions

For the reasons indicated above, the restriction requirement is improper and should be withdrawn. At a minimum, because this was a clear error on the part of the Patent and Trademark Office, a new restriction requirement should be prepared and Applicants should be allowed a chance to respond to the properly prepared restriction requirement, wherein all the claims are assigned to at least one group. Applicants earnestly await receipt of the initial Office Action on the merits.

If additional extensions of time are necessary to prevent abandonment of this application, then extensions of time are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required, including fees for net addition of claims, are hereby authorized to be charged to account number 19-0741.

Should the examiner believe that further discussion of any remaining issues would advance the prosecution, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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